

EXHIBIT D

From: [Portnoy, Lawrence](#)
To: [Alex Folkerth](#)
Cc: [Christopher Kinnon](#); [Bobby Henssler](#); [Kirsten McCormack](#)
Subject: RE: In re Under Armour Securities Litigation
Date: Wednesday, November 9, 2022 9:16:59 AM
Attachments: [image001.png](#)

EXTERNAL SENDER

Hi Alex,

Sorry for the delay. I will be back to you later today.

Larry

Lawrence Portnoy

Davis Polk & Wardwell LLP

+1 212 450 4874 office

+1 917 842 2628 mobile

lawrence.portnoy@davispolk.com

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Monday, November 7, 2022 5:43 PM

To: Portnoy, Lawrence <lawrence.portnoy@davispolk.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>;
Kirsten McCormack <KMccormack@rgrdlaw.com>

Subject: FW: In re Under Armour Securities Litigation

The sender, **Alex Folkerth** <AFolkerth@rgrdlaw.com>, is using an email domain that was created within the last year. Please proceed with caution.

Larry,

Just following up – on our October 26 call you indicated that you would provide a response to our below email.

Thanks,

T. Alex B. Folkerth

**Robbins Geller
Rudman & Dowd LLP**

58 South Service Road, Suite 200

Melville, NY 11747

(631) 367-7100



From: Alex Folkerth
Sent: Wednesday, October 19, 2022 3:34 PM
To: 'Kabia, Fatmata (NBCUniversal)' <Fatmata.Kabia@nbcuni.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

Fatmata,

Despite months of meet and confers and email exchanges, MSNBC still refuses to provide basic information we need, such as a hit count, to assess its assertions that our requests (narrowed by search terms) are overbroad and capturing only irrelevant documents.

MSNBC initially refused to provide any information about its own search for and collection of documents in response to the subpoena. But even after agreeing to run our suggested search terms, designed to narrow the scope of the subpoena and capture “**any responsive material**,” MSNBC refused to provide a hit count or any other information about the purportedly non-responsive and irrelevant documents these search terms captured. Instead, MSNBC now asks us to trust it and not the agreed-upon search terms, asserting belatedly that these search terms were overbroad and that MSNBC’s own review indicates the documents the search terms hit on are non-responsive and irrelevant.

To substantiate your assertions and avoid more unproductive calls and emails, please represent that:

MSNBC has no communications between Ms. Ruhle (or her staff and producers) and Under Armour between September 16, 2015 and January 1, 2018, concerning: (1) Under Armour representatives or employees appearing on air on MSNBC to discuss Under Armour; (2) Under Armour employees asking Ms. Ruhle (or her staff and producers) to make statements about Under Armour on air on MSNBC; or (3) Under Armour’s brand or specific products.

Thank you,

T. Alex B. Folkerth

**Robbins Geller
Rudman & Dowd LLP**

58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Alex Folkerth
Sent: Tuesday, October 18, 2022 12:15 PM
To: 'Kabia, Fatmata (NBCUniversal)' <Fatmata.Kabia@nbcuni.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

Fatmata,

Are you referring to your previous response that MSNBC “cannot” provide a hit count? Was there some kind of technical problem with the search? Or are you simply refusing to provide any information? We asked you for a detailed explanation for this position – please provide it before our call so we can assess MSNBC’s efforts to comply with our subpoena and have a more productive discussion tomorrow.

Thank you,

T. Alex B. Folkerth



58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100




From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Sent: Tuesday, October 18, 2022 11:23 AM
To: Alex Folkerth <AFolkerth@rgrdlaw.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Hi Alex,

On the hit list, please refer to our previous response. Let us discuss on our call tomorrow.

Best,
Fatmata

Fatmata S. Kabia | NBCUniversal Media, LLC 
Senior Counsel, NBCU News Group
M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>
Sent: Monday, October 17, 2022 7:08 PM
To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>
Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Fatmata,

Are you saying MSNBC cannot provide a hit count? Or will not provide a hit count? Either way, please explain why not in detail.

As we said over a month ago, we proposed search terms to avoid your office making self-interested and uninformed determinations about which documents are responsive to our requests and relevant to our case. You never indicated any objection to our search terms whatsoever. If you felt they were not likely to yield relevant documents, you should have told us so when we proposed them. Instead, you agreed to run the terms – you even told us, “***We can run your proposed terms to see if there is any responsive material.***”

Yet now, you baldly claim that the documents yielded by our search terms are not responsive, and you refuse to provide any additional information about these documents, even their number.

Again, absent a major change of course from MSNBC, we intend to move to compel the production of documents that MSNBC collected in response to our subpoena if they are not produced by Friday.

Thank you,

T. Alex B. Folkerth

[Redacted Signature]

58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100

[Redacted Contact Information]

From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Sent: Monday, October 17, 2022 6:22 PM
To: Alex Folkerth <AFolkerth@rgrdlaw.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER
Alex,

Thank you for the email. We cannot provide you with a hit list. That fact that there are hits does not reflect whether material is responsive or relevant. I look forward to speaking with you Wednesday.

Best,
Fatmata

From: Alex Folkerth <AFolkerth@rgrdlaw.com>
Sent: Monday, October 17, 2022 1:14 PM
To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>
Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Fatmata,

We are free to speak with you at 11:30 a.m. ET on Wednesday, 11/19. But another meet and confer will be unproductive without MSNBC first providing the additional substantive information we requested, including a hit count based on the search parameters we suggested over a month ago. Please provide us that information ahead of our call.

Absent a major change of course from MSNBC, we still intend to move to compel production if the documents you previously collected in response to our subpoena are not produced by this Friday, 11/21. We reserve all rights and waive none.

Thank you,

T. Alex B. Folkerth



58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Sent: Monday, October 17, 2022 9:48 AM
To: Alex Folkerth <AFolkerth@rgrdlaw.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Hi Alex,

We disagree with your characterization of the issues. There seems to be a misunderstanding of our position on relevance, the results of our search, and our objections to the subpoena. I suggest that we have a call to discuss. I am generally available Wednesday morning (October 19) and Thursday (October 20). Please let me know if there is a time that works best for you.

Thank you,
Fatmata

Fatmata S. Kabia | NBCUniversal Media, LLC 

Senior Counsel, NBCU News Group

M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Monday, October 10, 2022 2:19 PM

To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>; Bobby Henssler <BHenssler@rgrdlaw.com>

Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

Your letter does not suggest good faith. MSNBC apparently possesses documents responsive to our subpoena because ***you admitted back in August that you have already collected documents in response to the subpoena***. You assert the documents are not relevant, yet you have not provided any information that would allow us to assess your claim. You claim that the documents are protected by the reporter's privilege, yet you refuse to respond to our position that Ms. Ruhle did not have a "source relationship" with Mr. Plank, or to provide any additional information that would support the existence of such a purported relationship.

We provided you objective search terms precisely to prevent MSNBC from making the sort of improper, subjective, and self-serving relevancy determinations you invoke to try to escape your discovery obligation. Thus, ***"the point of the search parameters is to yield relevant documents."*** Indeed, we specifically asked you to "let us know the number of hits yielded by these parameters, without any additional screening by your office." Despite our good faith and explicit instructions, however, you have given us no information whatsoever on how many documents were yielded by the parameters. Instead, you have simply "reiterate[d] the response contained in [y]our August 1, 2022 letter." In other words, you have wasted our time for the last two months.

Substantively, your position on relevance is unduly narrow and inconsistent with the broad standard of discovery under FRCP 26(b)(1). *See, e.g., Condit v. Dunne*, 225 F.R.D. 100, 105 (S.D.N.Y. 2004)

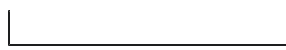
("Although not unlimited, relevance, for purposes of discovery, is an extremely broad concept."). Your letter indicates that, because "[n]one of the alleged misrepresentations at issue in this case were made by or to Mr. [sic] Ruhle, or on MSNBC," no documents in MSNBC's possession, custody or control are relevant. Not so. As I explained on our call nearly two months ago, Ms. Ruhle was an advisor and confidant to Mr. Plank during the relevant time period concerning issues important in our case, such as declining consumer demand for Under Armour's brand. Thus, her communications with Mr. Plank are extremely relevant. In fact, since speaking with you in August, we have encountered evidence in Under Armour's productions that Ms. Ruhle was involved in Under Armour's response to a negative analyst report that was published about the Company in January 2016. This report is one of the corrective disclosures in our case, and the subject of additional misleading statements, making communications between Ms. Ruhle and Mr. Plank all the more relevant.

Accordingly, the burden to demonstrate why the documents you collected should not be produced is yours. *Condit*, 225 F.R.D. at 106 ("Once any possibility of relevance sufficient to warrant discovery is shown, the burden shifts to the party opposing discovery to show the discovery is improper.") (cleaned up). You have utterly failed to carry this burden, and instead have engaged in gamesmanship.

Given your unsupported and unlikely claims of reporter's privilege, your inaccurate arguments on relevance, and your conclusory claims of burden, we have no choice but to conclude the documents you have collected are relevant and discoverable. Please produce these documents by October 21 or we will move to compel their production.

Thank you,

T. Alex B. Folkerth


58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Sent: Wednesday, October 5, 2022 6:02 PM

To: Alex Folkerth <AFolkerth@rgrdlaw.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>

Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Hi Alex,

I am feeling better, thanks. With respect to the search, please see the attached letter.

Best,
Fatmata

Fatmata S. Kabia | NBCUniversal Media, LLC 

Senior Counsel, NBCU News Group
M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>
Sent: Wednesday, October 5, 2022 10:04 AM
To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>
Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

I hope you're feeling better. Following up on this again – how did the search go?

Thanks,

T. Alex B. Folkerth



58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Sent: Friday, September 30, 2022 9:52 AM
To: Alex Folkerth <AFolkerth@rgrdlaw.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Thanks, Alex.

Best,
Fatmata

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Friday, September 30, 2022 9:27 AM

To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>

Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

Sure. We'll touch base next week. Get well soon.

Thanks,

T. Alex B. Folkerth



58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Sent: Friday, September 30, 2022 9:17 AM

To: Alex Folkerth <AFolkerth@rgrdlaw.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>

Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Hi Alex,

As an update, I am out sick. Could we have more time to review? I can get back to you next week.

Thanks,

Fatmata

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Wednesday, September 21, 2022 10:03 AM

To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>

Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Thank you, Fatmata. Appreciate your attention to this time-sensitive matter.

T. Alex B. Folkerth

[REDACTED]

58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100

[REDACTED]


From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Sent: Tuesday, September 20, 2022 5:42 PM
To: Alex Folkerth <AFolkerth@rgrdlaw.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Alex,

I hope you had a good weekend. We can run your proposed terms to see if there is any responsive material. I estimate that we can complete the review by September 30.

Best,
Fatmata

Fatmata S. Kabia | **NBCUniversal Media, LLC** 
Senior Counsel, NBCU News Group
M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>
Sent: Monday, September 12, 2022 2:40 PM
To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>
Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

Thank you for your time on the phone today. Given that you have refused to provide any additional detail about the search you conducted absent our agreement not to include your search terms in any potential litigation related to this subpoena – even after we explained on the call today that the Court hearing such litigation would undoubtedly need this information – we are providing the below proposed search parameters. As Chris expressed on the call, please let us know the number of hits yielded by these parameters, without any additional screening for relevance by your office; the point of the search parameters is to yield relevant documents.

Here are our proposed search parameters:

- Date range: September 16, 2015 to November 1, 2019
- Sources: Stephanie Ruhle's MSNBC email accounts
- Search terms:
 - "Plank"
 - "KP13@ua.com"
 - "KP13"
 - "KP"
 - "jsmith@underarmour.com"
 - "Under Armour"
 - "UA"
 - "Chef Curry"

We respectfully request that you run the search and respond with a hit count by September 19, as we only have about three months of discovery left and need these documents as soon as possible for potential use in depositions.

Thank you,

T. Alex B. Folkerth

58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100

□ □ □ □ □

From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Sent: Tuesday, September 6, 2022 2:15 PM

To: Alex Folkerth <AFolkerth@rgrdlaw.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>

Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Thanks, Alex. Monday at 1:00 pm ET works for me.

Best,

Fatmata

Fatmata S. Kabia | **NBCUniversal Media, LLC** 

Senior Counsel, NBCU News Group

M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Tuesday, September 6, 2022 2:07 PM

To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>

Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

A call sounds great, but I am not available on Friday. How about Monday, 9/12 at 1:00 p.m. ET? If that time does not work, please suggest a different time on Monday.

Thanks,

T. Alex B. Folkerth



58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Sent: Tuesday, September 6, 2022 1:06 PM

To: Alex Folkerth <AFolkerth@rgrdlaw.com>

Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>

Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Hi Alex,

I hope you had a good weekend. Are you available to discuss on Friday? I am available 10:30 am – 12 pm and 2pm—4:30 pm. Unfortunately, I have a time conflict on Wednesday.

Thanks,
Fatmata

Fatmata S. Kabia | **NBCUniversal Media, LLC** 

Senior Counsel, NBCU News Group

M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>
Sent: Tuesday, September 6, 2022 10:12 AM
To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Cc: Christopher Kinnon <CKinnon@rgrdlaw.com>; Kirsten McCormack <KMcCormack@rgrdlaw.com>
Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

Thank you for your response. We can certainly agree to keep the search terms confidential, but we may need to divulge them to the Court in the event we are forced to move to compel a production from MSNBC. To the extent your concern regarding using the terms in motion practice is related to keeping them confidential, however, we can agree to seek to keep the terms under seal in any court filings. Please provide the search terms as soon as possible.

When do you expect to answer our other questions related to the search? Has MSNBC's position on the reporter's privilege changed?

Perhaps another call would help us move this along. Are you available on Wednesday, September 7 at 1:00 p.m. ET?

Thank you,

T. Alex B. Folkerth



58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Sent: Tuesday, August 30, 2022 10:14 AM
To: Alex Folkerth <AFolkerth@rgrdlaw.com>
Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>; Christopher Kinnon <CKinnon@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Hi Alex,

I am emailing to follow up on your message. We are prepared to provide you with our search terms, without prejudice to the objections to the subpoena set out in our August 1, 2022 letter and any applicable privilege or work-product protection. Because we'd be providing these in order to demonstrate the reasonableness of our search and resolve our dispute over the subpoena, we would first need you to agree to keep the terms confidential and not use the terms in any potential motion practice.

Best,
Fatmata

Fatmata S. Kabia | NBCUniversal Media, LLC 

Senior Counsel, NBCU News Group
M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>
Sent: Tuesday, August 23, 2022 10:29 AM
To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>; Christopher Kinnon <CKinnon@rgrdlaw.com>
Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

Just following up on the below. Should we expect a substantive response this week?

Thank you,

T. Alex B. Folkerth



58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>
Sent: Friday, August 12, 2022 4:35 PM
To: Alex Folkerth <AFolkerth@rgrdlaw.com>
Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>; Christopher Kinnon <CKinnon@rgrdlaw.com>
Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Have a good weekend.

Thanks,
Fatmata

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Friday, August 12, 2022 2:55 PM

To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>; Christopher Kinnon <CKinnon@rgrdlaw.com>

Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Thanks, Fatmata. Have a great weekend.

T. Alex B. Folkerth



58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Sent: Friday, August 12, 2022 2:40 PM

To: Alex Folkerth <AFolkerth@rgrdlaw.com>

Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>; Christopher Kinnon <CKinnon@rgrdlaw.com>

Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Hi Alex,

I have received your email. We will get back to you.

Best,
Fatmata

Fatmata S. Kabia | NBCUniversal Media, LLC 

Senior Counsel, NBCU News Group

M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Wednesday, August 10, 2022 3:35 PM

To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>; Christopher Kinnon <CKinnon@rgrdlaw.com>

Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

Thank you for your time on the phone yesterday. I explained that we issued the subpoena to MSNBC because we are seeking, *inter alia*, communications between Stephanie Ruhle and Kevin Plank related to Under Armour. I explained that we have already subpoenaed Ms. Ruhle personally and that her counsel represented to us that she is not able to search her work email. I also explained that – to summarize – our case against Under Armour and Kevin Plank has to do with demand for Under Armour’s products and the strength of its brand between 2015 and 2019, and that we understand from articles in the *Wall Street Journal* and the *Washington Free Beacon* published in early 2019 that Ms. Ruhle was at relevant times a confidant and advisor to Mr. Plank concerning Under Armour.

You indicated on our call that you have conducted a search in response to our request and have located some emails based on search terms that you applied, but that you have deemed these emails unresponsive (although this decision was made before I explained why Ms. Ruhle’s communications regarding Under Armour are relevant to our case). You also indicated that MSNBC is claiming reporter’s privilege over these emails based on Ms. Ruhle’s purported “source relationship” with Mr. Plank. As I noted on the call, our position is that the reporter’s privilege does not apply because Ms. Ruhle’s communications with Mr. Plank in her role as confidant, advisor, and friend are not “information gathered **during a journalistic investigation.**” *Chevron Corp. v. Berlinger*, 629 F.3d 297, 306 (2d Cir. 2011). As the Second Circuit has long held, “the talisman for invoking the journalist’s privilege is intent to disseminate to the public at the time the gathering of information commences,” which the party claiming the privilege must establish “through competent evidence.” *von Bulow by Auersperg v. von Bulow*, 811 F.2d 136, 145 (2d Cir. 1987). In other words, “the reporter’s privilege is not extended to a person who gathers information **for personal reasons unrelated to dissemination of that material to the public,**” *In re McCray, Richardson, Santana, Wise, Salaam Litig.*, 991 F. Supp. 2d 464, 467 (S.D.N.Y. 2013), as was the case with Ms. Ruhle here.

I also asked for more detail about the search you have conducted and you indicated that you would have to check and get back to me. Please answer the following questions:

- What search terms were applied?
- Which mailboxes were searched?
- Was a time period limitation applied to the search, and if so what was it?
- How many emails did the search yield?
- What is MSNBC’s email retention policy, *i.e.*, if emails are automatically deleted after a certain period of time, what is that period of time? Are emails deleted pursuant to this policy retrievable?

At bottom, it appears we have a difference of opinion regarding whether the emails that you located

should be produced – you are withholding them based on relevance and the reporter’s privilege, but from what we understand about how they were located and the context in which they were created, they are relevant and not privileged. We look forward to learning more about your search to further inform our position and to ascertain whether MSNBC has additional responsive documents in its possession, custody, or control.

Thank you,

T. Alex B. Folkerth

[Redacted]

58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100

[Redacted]

From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Sent: Tuesday, August 2, 2022 11:40 AM

To: Alex Folkerth <AFolkerth@rgrdlaw.com>

Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>

Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Thanks, Alex.

Best,

Fatmata

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Tuesday, August 2, 2022 11:32 AM

To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>

Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Thanks, Fatmata. Let’s do Tuesday at 11. I will circulate a calendar event with a dial-in.

T. Alex B. Folkerth

[Redacted]

58 South Service Road, Suite 200
Melville, NY 11747
(631) 367-7100

[Redacted]



From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Sent: Tuesday, August 2, 2022 11:29 AM

To: Alex Folkerth <AFolkerth@rgrdlaw.com>

Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>

Subject: RE: In re Under Armour Securities Litigation

EXTERNAL SENDER

Hi Alex,

Are you by any chance available early next week? I am free Monday 10 am -12 pm and Tuesday 11 am – 4pm.

Thanks,
Fatmata

Fatmata S. Kabia | **NBCUniversal Media, LLC** 

Senior Counsel, NBCU News Group

M: (347) 522-0260

From: Alex Folkerth <AFolkerth@rgrdlaw.com>

Sent: Tuesday, August 2, 2022 9:27 AM

To: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Cc: Mara Waligurski <MWaligurski@rgrdlaw.com>

Subject: [EXTERNAL] RE: In re Under Armour Securities Litigation

Hi Fatmata,

Thank you for the letter. What is your availability to discuss this matter by phone tomorrow or Thursday?

Best,

T. Alex B. Folkerth



58 South Service Road, Suite 200

Melville, NY 11747

(631) 367-7100





From: Kabia, Fatmata (NBCUniversal) <Fatmata.Kabia@nbcuni.com>

Sent: Monday, August 1, 2022 6:15 PM

To: Alex Folkerth <AFolkerth@rgrdlaw.com>

Subject: In re Under Armour Securities Litigation

EXTERNAL SENDER

Dear Alex,

Please see the attached letter.

Regards,

Fatmata

Fatmata S. Kabia | NBCUniversal Media, LLC 

Senior Counsel, NBCU News Group

M: (347) 522-0260

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